

THE MINER'S RIGHT

The North Queensland Miner's Association Incorporated
Representing Miners, Prospectors and Associated Industries

Edition: May 2015

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Next Meeting:

Monday
11 May 2015
Mareeba Leagues
Club 12:30pm

SECRETARIES REPORT: By Claire Mackney

It's hard to believe that we have reached May already! The dry season has arrived and it's beautiful here in Far North Queensland.

An update on matters of interest below.

DNRM: I have been advised by Dean Barr that the previously passed amendments are still on hold with the change of government. I am told that the newly elected government may want to amend some of the previous changes before their enactment.

The Mineral Hub is our first point of contact for all mining lease and exploration permit enquiries. They can be contacted on 07 4447 9230 or via email to mineralhub@dnrm.qld.gov.au and you will be put through to the appropriate person to assist with your matter.

A reminder to be aware of timeframes as they relate to mining lease applications and date of pegging, the Mineral Hub are fairly unforgiving when it comes to lodgement and inclusion of strong work programs and all required information.

EHP: No major changes on the Department of Environment and Heritage Protection (EHP) front since our last update. New mining lease applications are deemed as a major amendment due to the inclusion of more ground. If you are adding a new ML to an existing environmental authority, you will find yourself on the receiving end of a phone call asking for a further \$176.70 due to the policy of collecting a further 30% for "major amendments". Quite frustrating but standard practice.

EMFRL: There has been no progression on this topic since our last meeting. However, Vicky Lake is proposing that a couple of NQMA members attend meetings in Brisbane to have a face to face meeting with the Minister. This will be discussed at the Monday meeting.

I look forward to seeing you at our next general meeting at 12:30 on 11 May 2015 at the Mareeba Leagues Club.

Claire Mackney
NQMA Secretary

NATIVE TITLE ROUND UP: By Paul Crossland

Update – NTA Section 29 – Right to Negotiate

RTN Batch 3- the Djungan Peoples Areas.

The public advertising and notification date for this RTN batch was 14 December 2011. There are 3 mining applicants in this batch who are required to negotiate an ancillary agreement for their mining tenement applications, 1 is a small scale miner and 2 are proprietary companies. The future act representative acting for the Djungan Peoples is the North Queensland Aboriginal Land Council. The NQLC has advised that discussions have been conducted with the Djungan People's Registered Native Title Body Corporate for the negotiation of the ancillary agreements in the Djungan RTN batch. The NQLC has advised that they will progress this RTN batch after the authorization of the new Djungan Peoples Small Scale Mining Indigenous Land Use Agreement (SSM ILUA).

The Mareeba Area Batched RTN

This batch of RTN notices was advertised in January 2013. The notification date was the 6th of February 2013. The native title party closing date was the 06 May 2013 and the objection closing date was 06 June 2013. This batch consists of twelve mining lease applications and three EPMs. There is one Small Scale Miner remaining in the Western Yalanji native title claim area with 2 mining lease applications who is required to negotiate an agreement to satisfy the native title obligations for the mining applications.

Mining tenement applicants in any of the RTN batches who wish to have the NQMA represent them in the negotiation process need to be financial members of the NQMA and authorize the NQMA to act on their behalf. The NQMA has a Standard Ancillary Agreement that is available to mining applicants. This purpose of this agreement is to save time and costs of drafting an agreement from scratch and it has been based on the new Small Scale Mining ILUAs.

I invite miners who are having difficulty with starting or progressing agreement negotiations or any information relating to the RTN process please contact the NQMA Native Title Officer. Contacts:
Paul.E.Crossland- (07) 4095 3324 Email- pc403@bigpond.com

Update on the Small Scale Mining Indigenous Land Use Agreements (SSM ILUA)

There are two Small Scale Mining Indigenous Land Use Agreements presently in place. The new Western Yalanji SSM ILUA was registered on the 23rd of April 2014. The new Ewamian SSM ILUA was registered on the 24th of April 2014. Mining applicants who wish to utilise the provisions of the new SSM ILUA should contact the Department of Natural Resources and Mines regarding deeding into the ILUA.

Miners who need to have land clearance inspections carried out in order to comply with their obligations regarding Aboriginal Cultural Heritage protection should send a copy of the inspection Notice as per Schedule 4 of the SSM ILUA to the North Queensland Aboriginal Land Council and the Native Title Party. The address for service of the Notice is:

North Queensland Aboriginal Land Council:

C/ The Principle Legal Officer
North Queensland Land Council
PO Box 679N
Cairns North, Qld 4870 Phone: (07) 4042 7000

For the Western Yalanji SSM ILUA:

Western Yalanji Aboriginal Corporation
Street address: Unit 7B & C, Hort Street, Mareeba, QLD 4880
Postal: PO. Box 2682 Mareeba, QLD 4880
Phone: (07) 4092 6712
Email: admin@westernyalanjicorp.com

For the Ewamian Peoples SSM ILUA:

Ewamian Aboriginal Corporation at contact address -
9A Hort Street Mareeba Qld 4870
Phone (07) 4092 2555
Fax: (07) 4092 2555
Email: Sharon@Ewamian.com.au

Djungan Peoples SSM ILUA

The Djungan Peoples Small Scale Mining Indigenous Land Use Agreement (SSM ILUA) was considered at the Djungan Peoples community meeting held in Cairns on the 10th April 2015. A resolution was passed by the Djungan Peoples representatives who attended the community meeting, to proceed to authorization of the new SSM ILUA. The authorization meeting was held on the 24th April 2015 in Cairns. The new Djungan SSM ILUA was duly authorized by the Djungan Peoples.

To avoid any confusion, now that the new Djungan SSM ILUA has been authorized by the native title parties, there are other stages required in the process for the new ILUA. There will still be several months required for the registering of the ILUA by the National Native Title Tribunal before the ILUA will be available for miners to deed into to satisfy the native title obligations for their mining tenure applications.

Negotiating in Good Faith, what does this mean?

Under the national Native Title Act 1993 (Cth), (the NTA), there is an obligation for the parties who are involved in negotiating an agreement, to negotiate in good faith. NTA s 31(1)(b), the negotiation parties must negotiate in good faith with a view to obtaining the agreement of each of the native title parties in respect to the doing of the future act (the granting of the mining tenement by the State) and whether the doing of the future act is to be subject to any conditions. For example, the amount of compensation to be paid by the grantee party to the native title party for the impact of the grant of the mining tenement upon their native title rights and interests; inspection of the mining tenement work area by the native title party for Aboriginal Cultural Heritage and any other benefits to be provided by the grantee party to the native title party. Under s31(2), there is no obligation for any party to negotiate in good faith in respect to matters that are not related to the effect of the grant of the mining tenement on native title rights and interests. The parties to a negotiation are: the Government party, any Native Title party and any grantee party, s30A.

Under s36(2) if any party fails to negotiate in good faith, only the native title party may make allegations against any another party that the other party has failed to negotiate in good faith. This is a very important section of the NTA for the grantee party to take particular note of, in the light of the recent decision handed down by the National Native Title Tribunal regarding an application made by a mining applicant for a Future Act Determination (FADA). This case is available to the public on the NNTT website. The reference for this decision is: QF2014/0007 – QF2014/0008 or case citation: [2015] NNTTA 13 (25 March 2015) which may be located in the NNTT website.

<<http://www.nntt.gov.au/searchRegApps/FutureActs/Pages/default.aspx>> (search terms: Search- Future act determinations; Tribunal file no.- QF2014/0007; Determination made between-01/02/2015 and 26/04/2015; Sort by- Tribunal file no.)

Prior to this decision, there have been only five Future Act Determinations that were decided in the favour of the native title party. In all the other Future Act Determination Applications made by mining applicants, the mining applicant was successful. This is the sixth FADA in Australia to be decided against the grantee party. The decision has set a precedent in Queensland, in respect to what it means to negotiate in good faith and the consequences for a mining applicant who fails to negotiate in good faith. It is important to note that under the NTA, section 36(2), in a case that is before the NNTT, if the native title party satisfies the Tribunal that another party has not negotiated in good faith, the Tribunal cannot make the future act decision and the parties will be sent back to continue negotiations. If the mining applicant does not wish to continue negotiating, then the available option is to withdraw the mining tenement application entirely. There has been a recent amendment (October 2012) to the *Mineral Resources Act 1989* (Qld), section 386, which gives the State power to cancel a mining tenement application where, amongst other things, the mining applicant fails to actively progress negotiations of an agreement to satisfy the native title conditions. Before the State will do the future act, which is to grant the mining tenement, the native title conditions must be satisfied.

The Tribunal Member, in the [2015] NNTTA 13 (25 March 2015) case, said that the native title party alleged that the grantee party had failed to negotiate in good faith by: unreasonable delay in engaging the right to negotiate procedure (at [38]), fixed and intractable negotiation position (at [47]), inconsistent information/unsatisfactory conduct relating to a change in position (at [57]), viewpoint regarding cultural heritage and impact on native title rights and interests (disparagement of cultural connection) at [69].

The Tribunal does not generally decide whether offers made during negotiations are reasonable. The Tribunal is more focussed on the conduct of the negotiations. The process that the parties will follow and the type of the agreement they will pursue is a fundamental aspect of negotiation. Reasonable action would involve back and forth communication about those fundamentals. The number of meetings held is not the important issue but it is the quality of communication between the parties on how the important issues are to be decided and this moves the agreement making process along. It is the responsibility of the grantee party to demonstrate and bring to the negotiating table an understanding of those issues that are central to the grantee party's needs and interests and those of the other parties. It is also incumbent upon the grantee to demonstrate a genuine attempt to resolve those issues which are central, otherwise it will be impossible for the parties to ever reach agreement. Cultural heritage is usually a very important matter. It is not appropriate for a grantee party to say that because a neighbour in the area had not seen evidence of native title party activity or because the area had been subject to mining in the past, that the area has no significance in respect to cultural heritage. The other important issue is compensation to the native title parties for the effect of the future act on their native title rights and interests. It is not appropriate for a grantee party to say in respect to compensation: 'don't see why we have to pay at all.' It is the laws of the Commonwealth that say why a grantee party has to pay compensation to the native title parties for the grant of the mining tenement.

Compensation for the effect of the future act on the native title rights and interests is provided for under the NTA. The Preamble of the *Native Title Act 1993* (Cth) states that "Justice requires that, if acts that extinguish native title are to be validated or to be allowed, compensation on just terms, and with a special right to negotiate its form, must be provided to the holders of the native title." Section 4(4) provides for compensation for future acts and compensation is governed under Division 5—Determination of compensation for acts affecting native title etc. (starts at section 48).

Practical aspects of negotiating in good faith. The grantee mining party should: Provide enough information to the other party to enable them to understand the nature and scope of the mining proposal. This is about clarity. Clarity with regard to resources enables the parties to understand more clearly what resources they require to make choices and what resources the other party has in order to efficiently and expediently progress and complete the negotiation process. Clarity about goals means that parties will gain a better understanding of what each of them want and why, and that their goals are legitimate and should be considered seriously. Clarity in respect of options is also important so that the parties know what options are available, and clarity about preferences enables parties to weigh up the various options and make an informed decision.

Have respect and show that you have respect for the other party's beliefs and views, even if you do not find those views acceptable to yourself. Everyone deserves to have their own views and beliefs respected.

Come to the negotiating table prepared to compromise and "cut a deal." Keep in mind that once you offer something, unless there is a real and substantial reason, there is no scope for you to change your mind and withdraw an offer. To do so is not good faith. Do not negotiate from a fixed position. Negotiating agreements is not about winners and losers or getting what you want and not being concerned with what the other party wants. The best agreement outcomes are those that result in the parties working together to obtain the best outcome and the greatest amount of benefits for both of them in the particular circumstances, a "win, win" outcome.

Even though the NTA s29 Right to Negotiate is technically the native title party's right to negotiate an agreement, the process is initiated by the grantee party and the native title party has no choice in whether to negotiate or not. The native title party has no right to refuse, no right of "veto." The usual effect of this is that at the start of the negotiation process, such a party may be a reluctant participant and likely to negotiate from a fixed position. Where a party has reluctance and has a fixed position, the best way for the other party to proceed is to gain the trust and respect of the other party by showing them respect and actively seeking to find out what that party's desires and wishes are. Once both parties understand what the other is seeking to achieve and what the capacity and capability of the other party is, both parties are empowered in the negotiation process. When parties work together with such knowledge about each other, they can work together to come up with novel ideas and benefits that both may share in. The result is a satisfactory outcome with each of them feeling that although they did not get exactly what they wanted, however, they can accept an agreement which provides suitable benefits and they will be ready, willing and able to cut the deal. The reality is that the NTA and its amendments, since it commenced in 1993, has involved native title parties in commercial business in respect to activities that are granted by the Government that are to be carried out on land and sea. Native title parties have thus become joint venture participants in the mining industry. Where miners work together and build good working relationships with native title parties, the benefits and achievements for each of them is substantial and far better than seeming to ignore and even worse, to hinder each other's economic business activities. Otherwise, small scale mining will be just too hard to do successfully.

Editors Notes:

It's May and it's nearly winter weather time! Thankful for some cooler days and nights. It has been a couple months since our last meeting, however not much has happened in the world of governments and moving things along. With the election and the extended uncertainty of who's who in the zoo, there still seems to be no getting down to work to produce any results as yet.. Mining Leases are still "with the Minister" for grant and limited information is coming out on the topics we have been chasing over the past months pre-election. Hoping we have some more successful outcomes in the next couple of Months.

As we know the year is flying by and before we know it the Annual Gold Panning Championships will be on again. Part of this day is the drawing of the ever popular jewellery raffle, as per last year we are calling on our gold miners and fossickers to donate a couple grams each of gold to be contributed to this major money raiser for the Association. If you do have some to pledge please drop into Barry Jarman in Tolga or bring to the meeting on Monday or give to a member that will be coming to the Meeting or mail to me!

The Miner's Right is a bit light on this issue. The next one is out early July - so any wanted or for sale items need to be sent in at the end of June. Also any articles that you want to reach to the greater good of miners please send in... See you at the meeting or around the traps... Fiona

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- Bremar Minerals (Tin Buyer) 0429440604
- Bidner Mining and Engineering, 0447968270
- Palmer River Roadhouse, 07 40602020
- AMETS Pty Ltd, Tenement Administration 07 40926431
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- Marano’s Fuel (All Fuel & Oil Needs) 07 40988222
- Kim Hillier Turbo Pans 0428250364
- Mining & Resource Permit Services (Pegging and Tenure Admin) 0407080673

OUT AND ABOUT FOSSICKING INFORMATION:

Mount Gibson – 5km north-west of Innot Hot Springs

Agate Creek – 70km south of Forsayth

O’Briens Creek – 38km north-west of Mount Surprise

Moonstone Hill - 90km south of The Lynd (Kennedy Development Road)

Young’s Block – 15km east of Charters Towers

For more information including getting a Fossicking Licence and maps of the above areas visit

<http://www.qld.gov.au/recreation/activities/fossicking/north-qld/>

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Membership must be current to take advantage of these discounts.



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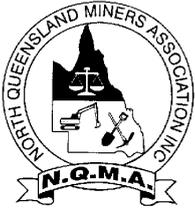



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NORTH QUEENSLAND MINERS' ASSOCIATION INC.

ABN 76 525 585 093

APPLICATION FOR MEMBERSHIP

I/We.....
the undersigned, being an eligible person, partnership, or company, hereby apply for Membership of the North Queensland Miners' Association Inc. (See eligibility clause below)

BUSINESS NAME.....

POSTAL ADDRESS.....
.....POSTCODE.....

CONTACT PERSON.....

Phone No during day:..... Fax No:.....

E-mail address if available.....

NUMBER and LOCATION of MINING TENEMENT/S held or ASSOCIATION WITH MINING INDUSTRY.....
.....

I/We hereby agree to comply with the Rules and Regulations as prescribed in the Constitution of the North Queensland Miner's Association Inc.

- Full Membership.** Enclosed herewith is Annual Membership Fee of \$100.00.
Eligibility for Membership: *'Any person, partnership or company who: is actively involved in mining or prospecting; holds or has an application for any mining tenure allowable under the Queensland Mineral Resources Act 1989 or any Act that replaces it; has a tenement before the Land and Resources Tribunal; or has a direct professional interest in the mining industry.'*
- Corporate Membership.** Enclosed herewith is Annual Membership Fee of \$250.00.
Eligibility for Membership: *'Any company which: is actively involved in mining or prospecting; holds or has an application for any mining tenure allowable under the Queensland Mineral Resources Act 1989 or any Act that replaces it; has a tenement before the Land and Resources Tribunal; or has a direct professional interest in the mining industry.'*
- Associate Membership.** Enclosed herewith is Annual Membership Fee of \$40.00.
Eligibility for Associate Membership: *'Any person or partnership who has interests in fossicking for gold, gems and metals; or any company or individual providing goods or services to the mining industry but not directly involved in mining'.*

SIGNED DATE/...../.....

Please send Application Form to:

NQMA Treasurer: Michele Mobbs, 16 Forest Close, Speewah Qld 4881
email: michelemobbs@westnet.com.au